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15 UNITED STATES DISTRICT COURT  
16 DISTRICT OF NEVADA

17 ORACLE USA, INC., a Colorado corporation;  
18 ORACLE AMERICA, INC., a Delaware  
19 corporation; and ORACLE INTERNATIONAL  
20 CORPORATION, a California corporation,

21 Plaintiffs,

22 v.

23 RIMINI STREET, INC., a Nevada corporation;  
24 AND SETH RAVIN, an individual,

25 Defendants.

26 Case No. 2:10-cv-0106-LRH-VCF

27 **ORACLE'S MOTION TO SEAL  
28 ORACLE'S OBJECTION TO  
MAGISTRATE JUDGE  
FERENBACH'S REPORT AND  
RECOMMENDATION ON  
ORACLE'S MOTION FOR  
SANCTIONS PURSUANT TO  
RULE 37**

## **MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to the Stipulated Protective Order governing confidentiality of documents entered by the Court on May 21, 2010, ECF No. 55 (“Protective Order”), Local Rule 10-5(b), Rules 5.2 and 26(c) of the Federal Rules of Civil Procedure, Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation (collectively “Oracle” or “Plaintiffs”) respectfully request that the Court grant leave to file under seal certain portions of Oracle’s Objection to Magistrate Judge Ferenbach’s Report and Recommendation on Oracle’s Motion For Sanctions Pursuant to Rule 37 (the “Motion”). A redacted version of this document was filed on October 5, 2019. ECF No. 1434. A version of this document without redactions will be subsequently filed under seal with the Court and linked to the filing of this motion.

11       Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to permit  
12 sealing of court documents for, *inter alia*, the protection of “a trade secret or other confidential  
13 research, development, or commercial information.” Fed. R. Civ. P. 26(c). For sealing requests  
14 relating to non-dispositive motions, such as Oracle’s Motion for Sanctions Pursuant to Rule 37,  
15 the presumption of public access to court filings may be overcome by a showing of good cause  
16 under Rule 26(c). *See Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010);  
17 *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). *See also* ECF No. 317 (granting  
18 Oracle’s 2012 Motion to Seal Plaintiffs’ Motion for Evidentiary Sanctions for Spoliation for  
19 “good cause” shown). The Court has “broad latitude” under Rule 26(c) “to prevent disclosure of  
20 materials for many types of information, including, but not limited to” the commercial  
21 information described in Rule 26(c)’s text. *Phillips v. General Motors Corp.*, 307 F.3d 1206,  
22 1211 (9th Cir. 2002) (citations omitted).

23 The Protective Order states, “Counsel for any Designating Party may designate any  
24 Discovery Material as ‘Confidential Information’ or ‘Highly Confidential Information –  
25 Attorneys’ Eyes Only’ under the terms of this Protective Order only if such counsel in good faith  
26 believes that such Discovery Material contains such information and is subject to protection under  
27 Federal Rule of Civil Procedure 26(c). The designation by any Designating Party of any

1 Discovery Material as ‘Confidential Information’ or ‘Highly Confidential Information –  
 2 Attorneys’ Eyes Only’ shall constitute a representation that an attorney for the Designating Party  
 3 reasonably believes there is a valid basis for such designation.” Protective Order ¶ 2.

4 Oracle requests that the Court seal portions of its Objection to Magistrate Judge  
 5 Ferenbach’s Report and Recommendation on Oracle’s Rule 37 Motion for Sanctions (ECF No.  
 6 1434), as this document contains information that Oracle has designated as “Confidential  
 7 Information” or “Highly Confidential Information – Attorneys’ Eyes Only” under the Protective  
 8 Order. Notably, portions of Oracle’s brief contain non-public, technologically and commercially  
 9 sensitive information relating to Oracle’s software, the public disclosure of which would create a  
 10 significant risk of competitive injury and particularized harm, and would prejudice Oracle.  
 11 Oracle’s competitors and potential competitors could use such information to compete unfairly  
 12 with Oracle.

13 Additionally, portions of Oracle’s brief also contain content that Rimini has designated as  
 14 Confidential or Highly-Confidential Information under the Protective Order.

15 Oracle further notes that the information in this Motion that Oracle asks this Court to seal  
 16 comes from Oracle’s original Rule 37 Motion for Sanctions, Rimini’s Opposition brief, and  
 17 Oracle’s Reply brief, all of which this Court previously permitted the parties to file under seal.  
 18 See ECF No. 1425 (granting Oracle’s Motion to Seal its Rule 37 Motion for Sanctions (*i.e.*, ECF  
 19 No. 1362), Rimini’s Motion to Seal its Opposition Brief (*i.e.*, ECF No. 1373), and Oracle’s  
 20 Motion to Seal its Reply Brief (*i.e.*, ECF No. 1378)). This Court has previously granted motions  
 21 to file under seal portions of other documents that contained the same or similar kinds of  
 22 confidential information. See also ECF Nos. 226, 325, 518, 904, 990, 1107, 1228, 1261, 1349;  
 23 see also *Rimini II*, Case No. 2:14-cv-1699, ECF No. 627.

24 Oracle has submitted all other portions of its Motion to the Court’s public files, which  
 25 allows public access to all materials except for the items discussed above. Oracle only requests  
 26 sealing of documents containing particularly sensitive information. Accordingly, this request to  
 27 seal is narrowly tailored and would not frustrate the public’s visibility into the judicial process.

1 For the foregoing reasons, Oracle respectfully requests that the Court grant leave to file under seal  
2 the portions of the documents discussed above.

3 Morgan, Lewis, and Bockius LLP

4 DATED: October 5, 2020

5 By: /s/ John A. Polito  
6 John A. Polito

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8 Attorneys for Plaintiffs Oracle USA, Inc., Oracle  
9 America, Inc. and Oracle International  
Corporation

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## [PROPOSED] ORDER

Pending before this Court is Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation’s (collectively “Oracle”) Motion to Seal Oracle’s Objection to Magistrate Judge Ferenbach’s Report and Recommendation on Oracle’s Rule 37 Motion for Sanctions. Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to permit sealing of court documents for, *inter alia*, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c). Having considered Oracle’s Motion to Seal and for good cause existing:

IT IS HEREBY ORDERED THAT Oracle's Motion to Seal is GRANTED. The Clerk of the Court shall file under seal the following documents and materials:

- Portions of Oracle’s Objection to Magistrate Judge Ferenbach’s Report and Recommendation on Oracle’s Rule 37 Motion for Sanctions.

IT IS SO ORDERED.

DATED:

By:

Hon. Larry R. Hicks  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of October, 2020, I electronically transmitted the foregoing ORACLE'S MOTION TO SEAL ORACLE'S OBJECTION TO MAGISTRATE JUDGE FERENBACH'S REPORT AND RECOMMENDATION ON ORACLE'S RULE 37 MOTION FOR SANCTIONS and [PROPOSED] ORDER to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

Morgan, Lewis, and Bockius LLP

DATED: October 5, 2020

By: /s/ John A. Polito  
John A. Polito

Atorneys for Plaintiffs Oracle USA, Inc., Oracle America, Inc. and Oracle International Corporation